

COMPENSATING THE GROS VENTRE AND ASSINIBOINE  
TRIBES OF THE FORT BELKNAP INDIAN COMMUNITY FOR  
IRRIGATION CONSTRUCTION EXPENDITURES

APRIL 18, 1984.—Ordered to be printed

Filed, under authority of the order of the Senate of April 13 (legislative day, March  
26), 1984

Mr. ANDREWS, from the Select Committee on Indian Affairs,  
submitted the following

REPORT

[To accompany S. 1967]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1967) to reimburse the Gros Ventre and Assiniboiné Tribes of the Fort Belknap Indian Community for irrigation construction expenditures made from tribal funds, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill as amended do pass.

The amendments are as follows:

On page 1, line 7, delete the words "plus 4 per centum interest on such" and insert in lieu thereof the words "which represents tribal"

On page 1, line 9, after "1913." insert the following new sentence: "The Secretary shall also pay 4 per centum simple interest on such funds."

PURPOSE

The purpose of S. 1967 is to reimburse the Gros Ventre and Assiniboiné Tribes of the Fort Belknap Indian Community for irrigation construction expenditures.

## BACKGROUND

The Fort Belknap Indian Reservation was established on May 1, 1888, by a statute implementing an 1887 Agreement which provided that funds were to be expended for the purchase of livestock and agricultural equipment. In 1889, the BIA installed pumps, ditches, and a lift device to divert waters of the Milk River to irrigate adjacent lands. Further diversions occurred in 1896. A dam was constructed in 1898 and replaced in 1982. Construction of the Three Mile Unit was begun in 1903 and was finished in 1909. The White Bear Unit was begun in 1909. The completed Milk River Irrigation Project consists of three integrated units: Milk River, Three Mile, and White Bear, serving an area of 21,351 acres. The cost of the Fort Belknap Irrigation Project was \$365,661.19 as of June 30, 1932, of which \$107,759.78 were tribal funds.

Tribal funds used for construction came from three sources:

(1) Fulfilling treaties—Indians at Fort Belknap Fund; established by the act of May 1, 1888 (25 Stat. 114) confirming a treaty that provided the sum of \$1,150,000 payable in 10 annual installments.

(2) Fort Belknap 4 Percent Fund; established by the act of June 10, 1896 (29 Stat. 351) for payment of \$360,000 to Fort Belknap Tribes for "ceding" of land in southern part of the reservation.

(3) Interest on Fort Belknap 4 Percent Fund.

A detailed breakdown of the tribal funds expended for the irrigation project follows:

## FORT BELKNAP IRRIGATION PROJECT EXPENDED FROM TRIBAL FUNDS

Year	Fulfilling treaties with Fort Belknap Indians	Fort Belknap 4 percent fund	Interest on Fort Belknap 4 percent fund	Totals year
1895.....	\$494.51			\$494.51
1896.....	8,901.14			8,901.14
1897.....	5,615.52			5,615.52
1898.....	1,568.25			1,568.25
1899.....		\$14,353.74		14,353.74
1900.....		16,028.90		16,028.90
1901.....		23,474.54	\$4,829.12	28,303.66
1902.....		3,738.93		3,738.93
1903.....		9,218.45		9,218.45
1904.....		5,463.60		5,463.60
1905-09.....	1,548.38	6,496.91	965.17	9,010.46
1913.....		3,139.52	1,267.90	4,407.42
1913.....		655.20		655.20
Total.....	18,127.80	82,569.79	7,062.19	107,759.78

This record of disbursements, by years, was taken from old appropriations ledger sheets and check stubs. Distribution of expenditures by units of the irrigation project was not shown on the documents merely the notation "Irrigation." Information secured from the agency was supplemented by data received from the office giving totals by funds.

Fulfilling treaties, Indians at Fort Belknap Fund, was from \$1,150,000 provided by act of May 1, 1888 (25 Stat. 114).

Fort Belknap 4 percent fund was from the \$360,000 provided at act of June 10, 1896 (29 Stat. 351).

In 1914, (38 Stat. 582, 583) Congress changed the policy with respect to charging costs against tribes and instead said that costs were to be borne by the owners of the irrigated lands that were benefited by the project.

In 1916, three tribes were reimbursed the tribal funds that had been expended for irrigation purposes. They are the Blackfeet, Flathead, and Fort Peck Tribes of Montana. The act of May 18, 1916 (39 Stat. 123, 141) says:

That the tribal funds heretofore covered into the Treasury of the United States in partial reimbursement of appropriations made for constructing irrigation systems on said reservations shall be placed to the credit of the tribe and be available for such expenditure for the benefit of the tribe as Congress may hereafter direct.

In 1926, the tribes of the Wind River Reservation were reimbursed for similar expenditures of tribal funds by administrative action.

In 1932, Congress passed the Leavitt Act (47 Stat. 564) to cancel certain charges paid by the U.S. Government that had been carried as debts against the tribes. In reporting to the Congress, the Secretary of the Interior purported to cancel the Federal share of irrigation charged against certain tribes. In a 1960 Opinion of the Solicitor, it was pointed out that the 1932 act provided that such charges were actually deferred by the Congress until such time as the Indian land went out of Indian ownership so there was, in effect, no Federal debt against the tribes on date of enactment of the act. The Secretary, therefore, was without authority to list these items for cancellation in his report to Congress.

In the 74th Congress, 1935, the Senate reported and passed S. 1531, to reimburse the Fort Belknap, San Carlos Apache, Fort Hall, Crow, Klamath and Uintah and Ouray Tribes for tribal funds heretofore expended on irrigation work as follows:

*Approximate expenditure from tribal funds*

Reservation and State:	
San Carlos Apache—Arizona .....	\$302,923
Fort Hall—Idaho.....	221,980
Crow—Montana .....	2,386,157
Fort Belknap—Montana.....	107,760
Klamath—Oregon.....	80,000
Uintah and Ouray—Utah .....	674,760
Total .....	3,773,580

The House committee favorably reported the measure but it did not pass. The 1916 law was cited as precedent by the Secretary of the Interior Ickes in his letter to Senator Thomas, chairman of the Committee on Indian Affairs. He "personally" favored the legislation but the Bureau of the Budget "advised it would not be in accord with the financial program of the President." The amount recommended for Fort Belknap was \$107,760.

In the 75th Congress, 1937, both the House and Senate reported bills identical to S. 1531 of the previous Congress but again it did not pass both bodies.

Again in the 76th Congress, the House favorably reported the same bill but no action was taken.

On September 18, 1970, the Congress passed Public Law 91-403 (84 Stat. 843) to reimburse the Ute Tribe of the Uintah and Ouray Reservation, Utah, for tribal funds used to construct, operate, and maintain the Uintah Indian irrigation project. In a letter dated May 1, 1970, from Fred J. Russell, Under Secretary of the Interior to Senator Jackson, chairman of the Committee on Interior and Insular Affairs, regarding H.R. 16416, Russell stated:

There are probably other Indian irrigation projects where tribal funds were used and the tribe has not been reimbursed. In order to assemble the facts, it would be necessary to go to the project cost records to determine the amount of tribal funds used and the extent of reimbursement. This would require considerable time and effort. Under the policy of this bill, however, those tribes would be entitled to reimbursement.

On the question of interest on the reimbursable funds, the report on Public Law 91-403 cited as precedent the act of May 25, 1948, (62 Stat. 269, 272) where tribal funds were reimbursed with simple interest because the tribe would have received such interest were the funds in question not expended for the use in question.

The sum of money proposed to be reimbursed here is still recorded on the "General Ledger Detail List" of the BIA Billings Area Irrigation Office.

The Fort Belknap Community Council passed a resolution on October 4, 1982 (145-82) in support of reimbursement of tribal funds.

#### LEGISLATIVE HISTORY

S. 1967 was introduced by Senator John Melcher on October 18, 1983. The Senate Select Committee on Indian Affairs held a hearing on March 7, 1984, at which representatives of the Fort Belknap Tribes and the Department of the Interior testified.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on April 9, 1984, with a quorum present, recommends by a unanimous vote that the Senate pass S. 1967 as amended.

#### COMMITTEE AMENDMENTS

The committee recommends two amendments of a technical nature.

#### SECTION-BY-SECTION ANALYSIS

There is one section in the bill, S.1967, as follows:

(a) Directs the Secretary of the Treasury to pay the Fort Belknap Tribes the sum of \$107,759.58 plus 4 percent interest on funds expended for irrigation construction from 1895 to 1913. Interest is to be calculated from the date of expenditure and payment will constitute full settlement of any claims by the tribes against the United States relating to irrigation construction expenditures.



(b) Provides that no more than 10 percent of the funds shall be paid in attorney or other fees. Violation is subject to a fine up to \$1,000.

#### COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1967, as amended, as provided by the Congressional Budget Office, is outlined below.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., April 12, 1984.*

Hon. MARK ANDREWS,  
*Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart  
Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1967, a bill to compensate the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community for irrigation construction expenditures, as amended and ordered reported by the Senate Select Committee on Indian Affairs, April 9, 1984.

The Congressional Budget Office has determined that enactment of this bill would require the U.S. Treasury to pay approximately \$457,000 to the tribes in question to compensate them for expenses incurred during the period from 1895 to 1913. The bill would not result in any costs to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

#### REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The committee believes that S. 1967 will have no regulatory or paperwork impact.

#### EXECUTIVE COMMUNICATIONS

The following letter was received by Senator Melcher prior to introduction of S. 1967:

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
*Washington, D.C., February 7, 1983.*

In reply refer to: Water and Land Resources, Water Resources-  
BCCO 4142

Hon. JOHN MELCHER,  
*U.S. Senate,  
Washington, D.C.*

DEAR SENATOR MELCHER: Thank you for your January 7 letter on behalf of the Chairman, Fort Belknap Community Council, regarding reimbursement of tribal funds expended many years ago on the construction of the Fort Belknap Irrigation Project.

We agree that tribal funds used for that purpose should be reimbursed and have held preliminary discussions with Ms. Boylan of your staff on this matter. We will write you further as soon as the appropriate course of action is agreed upon.

If we can be of further assistance, please let us know.

Sincerely,

SIDNEY L. MILLS,

*Director, Office of Trust Responsibilities.*

No letter report has been forthcoming from the Department of the Interior but the prepared statement for the March 7, 1984, hearing follows:

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (OPERATIONS) U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, HEARING ON S. 1967, A BILL TO COMPENSATE THE GROS VENTRE AND ASSINIBOINE TRIBES OF THE FORT BELKNAP INDIAN COMMUNITY FOR IRRIGATION CONSTRUCTION EXPENDITURES, MARCH 7, 1984

Mr. Chairman and members of the committee. Thank you for the opportunity to express the views of the Department of the Interior on S. 1967, a bill "To Compensate the Gros Ventre and Assiniboiné Tribes of the Fort Belknap Indian Community for Irrigation Construction Expenditures."

We oppose enactment of this legislation.

Briefly, the bill would reimburse the Gros Ventre and Assiniboiné Tribes of Fort Belknap for irrigation expenditures for construction of irrigation projects during years 1985 and 1913. The funds, totaling \$107,759.58, were paid to the U.S. Government out of tribal funds. The bill would provide for interest at the rate of 4 percent per annum. Payment of the funds to the tribes would be in full settlement of any claims in the matter. Any award of attorney fees in the matter would be limited to 10 per centum of the amount appropriated.

The original payment for the projects was taken from two tribal funds which were created from funds paid to the tribes for certain ceded lands. This was in keeping with the then-existing policy of requiring such reimbursement by tribes. The act of August 1, 1914 (38 stat. 582) changed the policy to require reimbursement by individual landowners benefited by the projects. In accord with the change in policy, the act of May 18, 1916 (39 Stat. 141) reimbursed the Blackfeet, Flathead, and Fort Peck Tribes and the later act of September 18, 1970 (84 Stat. 843) reimbursed the Ute Tribe of the Uintah and Ouray Reservation.

Our major objections to the bill as presently drafted are:

(1) We must question whether this matter is appropriate for legislation. The factual issues at stake have been litigated and determinations have been made in favor of the Government. In fact, these claims were filed with the Indian Claims Commission over 20 years ago and dismissed. It was found that the tribe benefited from these expenditures. *Fort Belknap Indian Commission v. U.S.*, 11 Ind. Cl. Comm. 479, (1962); and

(2) The authorization of the payment of attorney fees. We can see no justification for subsection (B) of the bill.

This concludes my prepared statement. I would be happy to answer any questions you or members of the committee may have.

An earlier statement, submitted on the evening of March 6, 1984, indicated that the Department of the Interior took no position on the bill. A letter from the Billings area office showing that the amount in question is still carried on the BIA ledger as "Loans Due Indian Tribes for Irrigation O&M" follows:

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
*Billings, Mont., February 24, 1984.*

In reply refer to: Division of Programs, Water Resources Code 380.  
Through: Superintendent, Fort Belknap Agency.

ED AZURE,  
*Fort Belknap Community Council,  
Fort Belknap Agency, Harlem, Mont.*

DEAR MR. AZURE: With reference to H.D. 501, dated December 16, 1932, the amount of \$107,759.78 still shows up in the Fort Belknap Irrigation General Ledger Account under Account No. 275.12 "Loans Due Indian Tribes for Irrigation O&M". To the best of my knowledge those costs have never been reimbursed to the Fort Belknap Tribes.

Sincerely,

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*Acting Area Director.*

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by S. 1967 as amended.

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THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
5708 S. UNIVERSITY AVENUE  
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RECEIVED  
JAN 10 1964

FROM  
DR. J. H. GOLDSTEIN  
DEPARTMENT OF CHEMISTRY  
UNIVERSITY OF CHICAGO  
5708 S. UNIVERSITY AVENUE  
CHICAGO, ILL. 60637

TO  
DR. J. H. GOLDSTEIN  
DEPARTMENT OF CHEMISTRY  
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